

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL ESTELLE,

Petitioner,

No. 05-CV-72458-DT

vs.

Hon. Gerald E. Rosen

RAYMOND BOOKER,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND
DISMISSING PLAINTIFF'S HABEAS CORPUS ACTION

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on August 3, 2006

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter having come before the Court on the Report and Recommendation of United States Magistrate Judge Paul J. Komives recommending that the Court deny Darryl Estelle's petition for a writ of habeas corpus, and that this case, accordingly, be dismissed; and Petitioner having timely filed Objections to the Report and Recommendation; and the Court having reviewed the Magistrate Judge's Report and Recommendation, the Objections thereto, and the Court's file of this action and having concluded that, for the reasons stated in the Report and Recommendation, the petition for habeas corpus relief should be denied; and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation

of April 6, 2006, with the corrections noted in footnote 1 be, and hereby is, adopted by this Court.¹

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Darryl Estelle's petition for habeas corpus relief be, and hereby is DENIED and the above-captioned case, therefore, is DISMISSED.

IT IS FURTHER ORDERED that, for the reasons stated by the Magistrate Judge, pursuant to 28 U.S.C. § 2243(c), no certificate of appealability should issue for purposes of appeal of this matter. The Court will also deny Petitioner leave to appeal *in forma pauperis*. A habeas petitioner seeking to appeal the denial of a habeas petition will not be permitted to proceed *in forma pauperis*, where the appeal would be frivolous. *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: August 4, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 4, 2006, by electronic and/or ordinary mail.

¹ (1) The case cited as "*United States v. Anderson*" on pp. 22 and 23 is incorrect; the correct case name is *United States v. Apperson*, 441 F.3d 1162 (10th Cir. 2006).

(2) Typographical error in the quoted excerpt of *Richardson v. Marsh*, 481 U.S. 200, 206 (1987) -- "almost invariably" should be "almost invariable."

s/V. Sims for LaShawn R. Saulsberry

Case Manager